IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 22928 of 2007(D)

IA 2541/07 in IA 2784/07 & IA 3685 in OS.3224/2003 of
PRL.MUNSIFF COURT,THRISSUR

.....

PETITIONER:

K.K.RAJAN, S/O.KATTIPPURA KUTTAPPAN,
GENERAL MERCHANT, ROOM NO.XVII/616,
CHERPU MARKET ROAD, THRISSUR,
RESIDING AT PARALAM VILLAGE,
CHENNAM DESOM, THRISSUR.

BY ADV. SRI.P.VIJAYA BHANU
SRI.M.GEORGE THOMAS

RESPONDENTS:

K.K.BALAN, S/O.KATTIPPURA KRISHNAN,
PERIMBILLYSSERY DESOM, CHOVOOR. P.O.,
THRISSUR.

BY ADV. SRI.T.M.CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 true copy of the plaint in OS 3224/03 before the Munsiff Court, Thrissur dated 16.10.2003.

Ext.P2 true copy of the affidavit with petition IA 2541/07 in OS 3224/03 before the Munsiff Court, Thrissur dated 12.3.07.

Ext.P3 true copy of the affidavit with petition IA 3685/07 in OS 3224/03 before the Munsiff Court, Thrissur dated 9.4.07.

Ext.P4 true copy of the IA 2784/07 in OS 3224/03 before the Munsiff Court, Thrissur dated 17.3.2007.

Ext.P5 true copy of the common order in IA Nos. 2541/07, 2784/07 and 3685/07 in OS 3224/03 of the Principal Munsiff, Thrissur, dated 13.6.2007.

M.N.Krishnan, J.

==========

W.P(C).No.22928 of 2007

==========

Dated this the 30th day of October, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside Ext.P5 order passed by the Principal Munsiff, Thrissur. Exts.P2 to P4 are the applications on which the order has been passed. Exts.P2 and P3 are the petitions to receive documents and Ext.P4 is the application to reopen the evidence and allow examination of the plaintiff. The suit is of the year 2003. Along with the plaint the plaintiff had produced three documents. Thereafter, he had been examined. Order 13 Rule 1 of the amended Civil Procedure Code reads as follows: "The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement." So the mandate or the intention of the Legislature is a direction to the party to produce the document or at least a list at the very inception or commencement of the proceeding and time is granted for

production of those documents mentioned before the settlement of issues. I do not say that there are no exceptional grounds at all where the court can receive documents if it finds that they are relevant and that in spite of due diligence the party was not able to produce the same.

2. In this case, the suit is one for permanent injunction and the fight is between the brothers. The plaintiff has come to the court with the prayer that his right to be in possession is to be protected. Now Ext.P2 would reveal that all the documents sought to be produced are after the year 2005. Ext.P3 would reveal that all the documents attempted to be produced are of the year 2007.

3. The crucial decision to be taken in the case is who is in possession of the premises on the date of institution of the suit in 2003. There is no case for the plaintiff that subsequent to the suit he has come into possession of the property. Therefore, the court may not have to look into the same for deciding the issue. The materials to be found out are as on the date of the suit, who is in possession of the property. The subsequent evidence may not help especially when there is no pleading to that effect.

Therefore, these documents are not very relevant for the purpose of determining the issue between the parties for the reason that they have come into possession after the institution of the suit.

4. Therefore, I do not find any mistake committed by the learned Munsiff in dismissing the application. I feel that the learned Munsiff was a little harsh of imposing a cost of Rs.750/-, which requires to be corrected and therefore I modify the order of the learned Munsiff by confirming the order of dismissal of the application, but deleting the order of payment of cost of Rs.750/-.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 30/10